

ESTTA Tracking number: **ESTTA595543**

Filing date: **03/31/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91214938
Party	Defendant KSB Aktiengesellschaft
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Date	03/31/2014
Attachments	92352_motion.pdf(154941 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE**  
**TRADEMARK TRIAL AND APPEAL BOARD**

BALDOR ELECTRIC COMPANY,	)	
	)	
Opposer,	)	
	)	
v.	)	Opp. No.: 91214938
	)	App. No.: 79/112,458
	)	Pot. Mark: REEL SUPREME
KSB AKTIENGESELLSCHAFT,	)	
	)	
Applicant.	)	
	)	

**APPLICANT’S MOTION TO DISMISS COUNT II**  
**OPPOSER’S NOTICE OF OPPOSITION**

KSB Aktiengesellschaft (“KSB” or “Applicant”) by and through its undersigned counsel, hereby submits this Motion to Dismiss Count II of Opposer Baldor Electric Company’s (“Baldor” or “Opposer”) Notice of Opposition pursuant to Federal R. Civ. P. 12(b)(6).

As will be shown, Count II, which alleges that KSB did not have a *bona fide* intention to use the mark at issue in commerce, should be dismissed because Opposer (1) provides no information or explanation (and thus no notice to Applicant) regarding why or how KSB purportedly lacked a *bona fide* intent to use its mark in commerce with the goods listed in the application, and (2) does nothing more than set forth the basic allegation without explanation.

**I. Opposer’s Allegation**

Count II of Opposer’s Notice of Opposition asserts a lack of *bona fide* intent to use the mark in commerce. *See* D.I. 1. The entirety of Opposer’s allegation regarding the alleged lack of *bona fide* intent to use the mark in commerce consists of the following:

8. Baldor incorporates the above allegations by reference.<sup>1</sup>

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<sup>1</sup> None of the above referenced paragraphs contain any allegations or claims relevant to KSB’s *bona fide* intention to use a mark.

9. On information and belief, KSB lacked a bona fide intention to use KSB's Mark in commerce in connection with KSB's Goods at the time KSB filed its request for extension of protection of its international registration to the United States.

10. Accordingly, U.S. Ser. No. 79/112,458 is void under Section 66 of the Lanham Act, 15 U.S.C. §1141f.

*Id.* at paras. 8-10. Opposer does not provide any information of any kind to support this claim nor does it provide any hint as to the basis for its alleged "information and belief." For the reasons set forth below, these allegations fail to satisfy Opposer's pleading requirements and should be dismissed.

## **II. Argument**

Factual allegations contained in a complaint must be sufficient to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint which offers merely "labels and conclusions" or a "formulaic recitation of the elements" without "further factual enhancement" cannot survive a motion to dismiss. *Ashcraft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009).

In order to state a claim based upon a lack of a *bona fide* intent to use a mark, the Opposer "has to notify the applicant of the general 'circumstances, occurrences, and events' causing the flaw in the application." *Aktieselskabet AF 21. November 2001 v. Fame Jeans Inc.*, 525 F.3d 8, 86 U.S.P.Q.2d 1527, 1537 (D.C. Cir. 2008) (citing *Twombly*, 127 S. Ct. at 1965 n.3.) "Although the complaint need not go into detail, it must at least notify the applicant of how the general circumstances fail to show intent." *Id.*; see also *Sandro Andy, S.A. v. Light, Inc.*, 2012 WL 6709268 at \*5 (S.D.N.Y. December 27, 2012) ("A petition to cancel an extension of an International Registration based on an alleged lack of a bona fide intent to use the mark in

commerce for some or all of the listed goods is a valid claim where it is supported by adequately alleged facts.”).

Opposer’s conclusory statement regarding Count II provides absolutely no information or explanation (and thus no notice to Applicant) regarding why or how KSB purportedly lacked a *bona fide* intent to use its mark in commerce with the goods listed in the application at the time KSB filed its request for extension of protection in to the United States. Opposer’s allegations fall short even of the limited information that Courts have considered sufficient in other cases regarding an allegation of a lack of bona fide intent to use a mark.

For example, in *Fiat Group Automobiles S.p.A. v. ISM Inc.*, 94 U.S.P.Q.2d 1111, 1115-16, 2010 WL 956670, (T.T.A.B. 2010), the Opposer had alleged that “[o]n information and belief, Applicant has never been in the automotive manufacturing industry, nor does it intend to be in the automotive manufacturing industry in the future” and that “... Applicant did not have a bona fide intent to use the mark at the time the application was filed.”). In considering a motion to dismiss, the Board stated “we find opposer’s allegations that applicant has not been engaged in the manufacture or sale of automobiles under the claimed mark or otherwise, and, therefore, applicant lacks a bona fide intent to use the mark in commerce, to state a sufficient claim.” *Id.* Similarly, in *Aktieselskabet AF 21.*, the Court found an Opposer’s allegations sufficient where the Opposer had included numerous allegations, including that Applicant “has never used the [ ] mark anywhere in the world” and Opposer’s “investigation reveal[ed] that it does not intend” to use the mark in the United States. *Aktieselskabet AF 21. November 2001* at 86 U.S.P.Q.2d 1538.

Baldor's allegations in the instant case are limited to an unexplained "information and belief," and fall short of the limited allegations set out in *Fiat Group* or *Aktieselskabet AF 21*.<sup>2</sup> Such "labels and conclusions" amount to nothing more than the "formulaic recitation of the elements" without "further factual enhancement" that the Supreme Court has rejected. *Ashcraft*, 129 S.Ct. at 1949.<sup>3</sup>

### **III. Conclusion**

Opposer's Notice of Opposition fails to meet the applicable notice pleading requirements with respect to its assertion that KSB purportedly lacked a *bona fide* intent to use its mark at the time it sought an extension of protection into the United States. Applicant respectfully requests that the Board grant Applicant's motion to dismiss Count II of Opposer's Notice of Opposition.

Respectfully submitted,

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<sup>2</sup> For example, given Applicant's presence in the market related to the goods listed in its application, it would seem Opposer could not an allegation of the type set out in *Fiat*. Likewise, a simple review of Applicant's website shows use of KSB's mark on its website, in product brochures, and elsewhere, contrary to the assertions contained in *Aktieselskabet AF 21*.

<sup>3</sup> Applicant notes that if bald conclusions of the sort made by Opposer in its Notice of Opposition are sufficient to satisfy its pleading requirements, any application could be opposed on the grounds of a lack of *bona fide* intent to use the mark simply because the applicant contains such a claim.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing APPLICANT'S MOTION TO DISMISS COUNT II UNDER RULE 12(b)(6) was served on counsel for Opposer this 31st day of March, 2014, by sending same via First Class Mail, postage prepaid, to:

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/Alison Field/  
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